

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

MISCELLANEOUS APPLICATION NO. E051 OF 2024

(Arising from Petition No. E099 of 2021)

**IN THE MATTER OF THE ADVOCATES ACT, CAP 16 AND THE
ADVOCATES REMUNERATION ORDER**

-BETWEEN-

**KIRWA JONAH T/A MWAKIO, KIRWA & COMPANY
ADVOCATES.....APPLICAN
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-VERSUS-

**THE UNION OF KENYA CIVIL SERVANTS.....1ST
RESPONDENT**

**MARY MUKIRI.....2ND
RESPONDENT**

**JUSTUS MUGO.....3RD
RESPONDENT**

RULING

(DELIVERED BY HON. JUSTICE O. MAKAU)

Introduction

1. This ruling relates to the Notice of Motion dated 7th May 2025 filed by Kirwa Jonah T/A Mwakio, Kirwa & Company

Advocates (hereinafter “the Applicant Advocate”) seeking the following prayers: -

- a) That judgment be entered in favour of the Applicant against the Respondents jointly and severally for the sum of Kenya Shillings Four Million, Eight Hundred and fifty two Thousand, Nine Hundred and thirty two (Kshs. 4,852,932);***
- b) That the Respondents pay the applicant’s interest on the certified costs on 16th December 2024 at 14% per annum be awarded on the taxed sum from 23rd April 2024 until payment in full;***
- c) That the costs of this application be awarded to the Applicant.***
- d) Any other relief the court would deem fit.***

2. The application is brought under Section 51(2) of the Advocates Act, Cap. 16, the Advocates Remuneration Order, the Employment and Labour Relations Court Act, the Civil Procedure Act, and all other enabling provisions of the law. It

is supported by the affidavit of Kirwa Jonah sworn on 7th May 2025, a further affidavit sworn on 1st December 2025.

3. The application is vehemently opposed by the Respondents. through a Replying Affidavit sworn by Hon. Tom Odege on 22nd October 2025 and a Further Affidavit sworn on 2nd December 2025. Their core contention is that the application is incompetent, an abuse of court process and should be struck out with costs.
4. The parties, through their respective advocates, disposed of the motion by way of written submissions.

Background and Factual Context

5. The genesis of this dispute lies in **Nairobi ELRC Petition No. E099 of 2021, Walter Beigon vs. Hon. Tom Mboya Odege, Union of Kenya Civil Servants & two others**. It is not in dispute that the Applicant Advocate was instructed by the Respondents to represent them in the said petition.

After the conclusion of the primary suit, the Applicant Advocate demanded payment of his legal fees but the Respondents ignored his fee note, prompting him to file an Advocate/Client Bill of Costs dated 30th January 2024, seeking Kshs. 4,852,932/-.

6. The Bill of Costs was placed before the Deputy Registrar (Taxing Officer) for taxation. The Applicant's case is that the Bill of Costs, along with all subsequent taxation and mention notices for dates including 22/04/2024, 27/05/2024, 12/06/2024, 15/07/2024 and 18/11/2024 were duly served upon the Respondents through their official email address info@ukcs.or.ke and by physical service where applicable. He annexes stamped copies of documents, email trails, and affidavits of service as proof.
7. The Applicant states that despite service, the Respondents failed to file any response, attend court, or participate in the taxation proceedings at any stage. Consequently, the taxation proceeded ex-parte.

8. On 16th December 2024, the Hon. Deputy Registrar delivered a Ruling, taxing the Bill of Costs at the full sum of Kshs. 4,852,932/-. Subsequently, a Certificate of Taxation was issued on 24th February 2025. The Applicant states that these documents were served upon the Respondents, who took no steps to challenge the taxation by way of a Reference under Paragraph 11 of the Advocates Remuneration Order, a review or an appeal.
9. It is on the basis of this Certificate of Taxation, asserted to be final and unchallenged, that the Applicant filed the present application on 7th May 2025, seeking its adoption as a judgment of this Court under Section 51(2) of the Advocates Act.
10. The Respondents tell a starkly different story. They categorically deny ever being served with the Advocate/Client Bill of Costs dated 30th January 2024. They contend that the first time they became aware of any

taxation proceedings was on or about 21st October 2025, when their newly instructed advocates were granted access to the Court Tracking System (CTS).

11. They deny service of all but two notices, a Taxation Notice for 18/11/2024 received on 14/11/2024 and a Mention Notice for 9/12/2024 received on 22/11/2024. They argue that these notices, lumped together in one email for multiple files (E048, E049, E050, E051) and unaccompanied by the Bill of Costs, were insufficient to alert them to active adversarial proceedings against them.
12. The 1st Respondent, Hon. Tom Odege, specifically avers that he was never personally served with any process at any stage, despite being cited as a party jointly and severally liable.
13. The Respondents further attack the competency of the present application contending that it is not accompanied by a valid Certificate of Costs signed by the Taxing Officer who

taxed the Bill of Costs as mandatorily required by Section 51(2) of the Advocates Act. They argue that the Ruling dated 16/12/2024 and the Certificate of Taxation dated 24/02/2025 are distinct documents, and the absence of the certified certificate is fatal.

14. The Respondents have since filed a separate Reference, seeking to challenge the taxation ruling out of time, citing the reason for delay as the alleged non-service.

Issues for Determination

15. From the pleadings, affidavits, and submissions of the parties, the following are the key issues for the Court's determination: -
 - a) Whether the Applicant's motion dated 7th May 2025 is incompetent for want of a valid Certificate of Costs as required by Section 51(2) of the Advocates Act.
 - b) Whether judgment should be entered for the applicant as prayed in the motion.

- c) Whether costs and interest should be awarded as prayed in the motion.

Analysis and Findings

Competency of the Application

16. Section 51(2) of the Advocates Act provides a special, expeditious procedure for an advocate to recover taxed costs from a client. The subsection states:-

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the court, be final as to the amount of the costs covered thereby, and the court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”

17. The above provision is unambiguous. An application for entry of judgment from taxed costs must be founded upon a valid Certificate of Costs, and the retainer of the advocate should

not be in dispute. A valid Certificate of Costs is one that issued and signed by the Taxing Officer, who taxed the bill of costs, and which has not been set aside or altered by the court. The jurisprudence surrounding this provision is settled and unequivocal. In **D. Njogu & Company Advocates v Kenya National Capital Corporation [2006] eKLR**, the Ochieng J (as he then was) held that:-

“In section 51(2) of the advocates Act, the only certificate which would be final as regards the amount of costs covered thereby would be a certificate of “the taxing officer by whom any bill has been taxed”.

It is only such a certificate that can form the foundation upon which the court can make such order in relation thereto as it thinks fit, including in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due.

As the certificate herein was executed by Mr. Were, who did not tax the bill herein, it cannot

form the foundation for any further court orders. Therefore, the application before me is a non-starter. Accordingly, it hereby struck out, with costs.

However, it must be emphasized that this decision is not a bar to the issuance of a certificate by the taxing officer by whom the bill was taxed.”

18. In **Tom Ojienda & Associates v Nairobi City County [2022] KEHC 86**, the court enumerated the conditions for an application under S.51(2), first among them being:-

“a. the costs have been taxed by and certified under the hand of the taxing master by a Certificate of Costs;

b. the Certificate of Costs has not been set aside or stayed or appealed against on a reference filed upon it; and

c. there is no dispute on retainer. Such a case, judgment is ordinarily entered in the sum in

the Certificate of Costs upon application by the advocate.”

19. I have perused the court record and it is clear costs were taxed by Hon. Mbeja vide ruling delivered on 16th December 2024 but the Certificate of Costs signed and issued by on 24th February 2025 by Hon. Riany. I take Judicial notice that Hon Mbeja had not been transferred from the station as at the time when the Certificate of Costs was signed by a different Deputy Registrar who had not taxed the bill.

20. Had the taxing officer left the station on transfer, then I would have excused the signing by another taxing officer by dint of section 43 of the Interpretation and General Provisions Act which states that:-

“Where a written law confers a power or imposes a duty on the holder of an office as such, unless a contrary intention appears, the power may be exercised and the duty shall be performed by the person for the time being holding the office.”

21. In this case, however, there was no good cause shown as to why the Hon Riany as opposed to Hon. Mbeja, signed the Certificate of Costs. For the said omission, the application before the court is not compliant with section 51(2) of the Advocates Act as it is not founded on a valid Certificate of Costs signed by the taxing officer who taxed the bill. Consequently, I find and hold that the application is incompetent as submitted by the Respondent.
22. In view of the foregoing conclusion, I will not consider the merits of the Applicant's Notice of Motion dated 7th May 2025. Instead I hereby strike out with costs to the Respondent for being fatally incompetent.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN
COURT AT NAIROBI THIS 19TH DAY OF FEBRUARY, 2026.**

ONESMUS MAKAU

JUDGE

Appearance:

Kirwa for the Applicant

Okong'o for the Respondent

ORIGINAL